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<b>Addressing</b>			
<b>From</b>		<b>To</b>	
Matthew Szelag/R10/USEPA/US		Helen Rueda/R10/USEPA/US@EPA	
<b>CC</b>		<b>BCC</b>	
John Palmer/R10/USEPA/US@EPA Kathleen Collins/R10/USEPA/US@EPA Laurie Mann/R10/USEPA/US@EPA			
<b>Description</b>			Form Used: Reply
<b>Subject</b>		<b>Date/Time</b>	
Re: Fw: WA temperature question		10/16/2012 10:57 AM	
<b># of Attachments</b>	<b>Total Bytes</b>	<b>NPM</b>	<b>Contributor</b>
0	10,709		Kim Owens
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Body

### Document Body

Hi Helen,

I just did some additional searching through our old Washington files and it appears that Ecology has had language regarding a *20°C maximum due to human activities and no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C* for the Pend Oreille since at least 1982. There is no detail in our justification letters approving WQS language that long ago. The language specifically using the *1-day maximum (1-DMax)* appears to be more recent than 1982, but I can't find any place where we speak to that in an approval letter.

Therefore, it's probably best to rely on the recent history regarding interpretation between us and Ecology that John mentioned below.

Hope this helps.

Matthew Szelag  
 US EPA Region 10  
 1200 Sixth Ave, Suite 900  
 Seattle, WA 98101  
 Phone: 206-553-5171

Helen Rueda

Thanks Matt We are actually interested in anythi...

10/16/2012 08:56:41 AM

From: Helen Rueda/R10/USEPA/US  
To: Matthew Szelag/R10/USEPA/US@EPA  
Cc: John Palmer/R10/USEPA/US@EPA, Kathleen Collins/R10/USEPA/US@EPA, Laurie Mann/R10/USEPA/US@EPA, Kim Owens/R10/USEPA/US@EPA, Kelly Gable/R3/USEPA/US@EPA, David Croxton/R10/USEPA/US@EPA, Don Martin/R10/USEPA/US@EPA, Ben Cope/R10/USEPA/US@EPA  
Date: 10/16/2012 08:56 AM  
Subject: Re: Fw: WA temperature question

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Thanks Matt

We are actually interested in anything pertaining to the daily maximum criteria such as our understanding of why that criteria is appropriate, our comments on what is meant by the wording. I note that the 2004 Kalispel Standard approval documents were silent on this topic, so it may be unlikely to find anything specific in an approval document from the 90's, but we wanted to check.

Matthew Szelag

Hi Helen, Here's the response I received from Johr

10/16/2012 08:36:44 AM

From: Matthew Szelag/R10/USEPA/US  
To: Helen Rueda/R10/USEPA/US@EPA  
Date: 10/16/2012 08:36 AM  
Subject: Fw: WA temperature question

---

Hi Helen,  
Here's the response I received from John.

Matthew Szelag  
US EPA Region 10  
1200 Sixth Ave, Suite 900  
Seattle, WA 98101  
Phone: 206-553-5171

----- Forwarded by Matthew Szelag/R10/USEPA/US on 10/16/2012 08:35 AM -----

From: John Palmer/R10/USEPA/US  
To: Matthew Szelag/R10/USEPA/US@EPA  
Cc: Kathleen Collins/R10/USEPA/US@EPA  
Date: 10/16/2012 08:12 AM  
Subject: Re: WA temperature question

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This language in WA's std predates revisions made in the 2000s. I'm not sure when WA adopted these provisions. However, there is some recent history on how to interpret this language. Including WA's AG office agreeing with EPA's interpretation with respect to the Pend Oreille provision below.

John

Matthew Szelag

John and Kathleen, Do you recall if the language...

10/15/2012 05:34:06 PM

From: Matthew Szelag/R10/USEPA/US  
To: John Palmer/R10/USEPA/US@EPA, Kathleen Collins/R10/USEPA/US@EPA  
Date: 10/15/2012 05:34 PM  
Subject: WA temperature question

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John and Kathleen,

Do you recall if the language below for the Pend Oreille was part of the large temperature action you worked on? I didn't see it, but want to make sure. If not, do you have any idea when we approved it or

have any knowledge about it? Seems like some of the basins have this language in the WQS, while others don't. I'd appreciate any information you have.

Thanks,

Matthew Szelag  
US EPA Region 10  
1200 Sixth Ave, Suite 900  
Seattle, WA 98101  
Phone: 206-553-5171

----- Forwarded by Matthew Szelag/R10/USEPA/US on 10/15/2012 05:30 PM -----

From: Helen Rueda/R10/USEPA/US  
To: Matthew Szelag/R10/USEPA/US@EPA  
Date: 10/15/2012 03:52 PM  
Subject: Standards Approval Documents

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Hi Matt

I am looking for a copy of EPA's approval of the site specific temperature criteria for the Pend Oreille River. WAC 173-201A Table 602 page 104:

"Temperature shall not exceed a 1-day maximum (1-DMax) of 20°C due to human activities. When natural conditions exceed a 1-DMax of 20°C, no temperature increase will be allowed which will raise the receiving water temperature by greater than 0.3°C"

I think this is a hangover that predates the most recent temperature standards in Washington.

I am also looking for the approval documents for the Kalispel Tribe water quality standards (in 2004 - I think).

Can you help with this?

Helen Rueda,  
Office of Water, Watershed Unit  
Region 10 USEPA  
805 SW Broadway, Suite 500  
Portland, OR 97205

(503) 326-3280 work  
(503) 326-3399 (FAX)

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Body

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Eric:

I'll be taking a annual leave day today. I will however be on a couple of conference calls - one at 9 on the Kalispel Temp TMDL and one at 2 on the nutrient protocol document

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<b>Description</b>			Form Used: Notice
<b>Subject</b>		<b>Date/Time</b>	
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<b>CC</b>		<b>BCC</b>	
<b>Description</b>		Form Used: Notice	
<b>Subject</b>		<b>Date/Time</b>	
Accepted: Tentative Hold: HQ-EPA Region 10 follow-up after Kalispel Tribe visit		08/09/2012 01:55 PM	
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<b>CC</b>		<b>BCC</b>	
David Croxton/R10/USEPA/US@EPA Christine Psyk/R10/USEPA/US@EPA			
<b>Description</b>			Form Used: Memo
<b>Subject</b>		<b>Date/Time</b>	
Fw: Kalispel/EPA July 24th Meeting Materials		07/12/2012 03:40 PM	
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1	31,591		David Croxton
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On July 24 Deane Osterman and others representing the Kalispel Tribe will be in Wash DC to meet with a small headquarters TMDL review team. We set this opportunity up at the Tribe's request for an independent review of the Region's tentative decision to approve the Washington TMDL for temperature impairment on Pend Oreille River. Headquarters staff have been very responsive to our request for assistance and will, I believe, provide a full and objective review of the situation. The Tribe continues to challenge aspects of the state's technical methodology and believes EPA should disapprove the TMDL. As a down stream sovereign, the Tribe believes this technical disagreement constitutes a violation of their water quality standards. The Region will participate in the discussion by phone.

Concurrently the Tribe has submitted FOIAs via their outside legal counsel requesting all documents pertaining to the development of the TMDL and otherwise appears to be preparing for a possible challenge depending on our final approval/disapproval decision.

Will keep you posted on the outcome of the discussion next week in DC

----- Forwarded by Mike Bussell/R10/USEPA/US on 07/12/2012 02:58 PM -----

From: Sarah Furtak/DC/USEPA/US

To: dosterman@kalispeltribe.com,  
Cc: Mike Bussell/R10/USEPA/US@EPA, David Croxton/R10/USEPA/US@EPA, Don Martin/R10/USEPA/US@EPA  
Date: 07/06/2012 03:19 AM  
Subject: Re: Kalispel/EPA July 24th Meeting Materials

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Dear Deane,

Thank you for sending along the draft materials.

Attached please find our markup (additions in blue) of the Kalispel Tribe's draft agenda showing specific location information for July 24, participants on our informal HQ technical review team, other HQ participants, and participants (via phone) from EPA Region 10. We've also made one change to the "Questions Presented" section to reflect our understanding that a primary purpose of the July 24 meeting is to provide the tribe an opportunity to explain to the EPA HQ technical review team why it believes each of the four subparts to the "Questions Presented" is true. We have not made any change to the objective in your draft agenda as we interpret that to be the Kalispel Tribe's desired outcome, and not necessarily EPA's meeting objective.

We will plan to have a laptop, projector and screen, and Internet connection (not wireless) for delivery of the Kalispel Tribe's presentation. When I receive the presentation about July 17, I will load this onto the laptop and have it ready for you to present during the visit.

It is our original understanding and our working assumption that this visit is the Kalispel Tribe's opportunity to present technical and legal issues the Kalispel Tribe has identified with the Pend Oreille temperature TMDL to the informal HQ review team. As I mentioned earlier, EPA HQ review team plans to listen carefully to the Kalispel Tribe's presentation in order to understand as fully as possible the issues the tribe has identified. As necessary and appropriate, members of the review team may ask clarifying questions. During the meeting, members of the review team do not expect to debate technical or legal points with the tribe's presenters or arrive at any decisions regarding the validity of the tribe's points. From EPA HQ's perspective, we view the meeting as primarily an opportunity to better understand the tribe's perspective on this TMDL, from the tribe's own experts. We see our role ultimately as providing legal, technical, and policy input to the Region, as it reviews the Washington state TMDL.

As I mentioned earlier, we expect that, shortly after our meeting on the 24th, we will follow up with the Region regarding our collective thoughts as the Region makes its final decision. We see our role as providing input to the Region, as EPA HQ and Region 10 work together in close coordination.

In your email, you seek agreement to three "basic assumptions" before the meeting on July 24. Without more information from tribal representatives about these assumptions, we do not believe that will be possible. At the meeting, we would be happy to listen to

your perspective on the "basic assumptions" to provide us a better understanding of how they apply, in particular, to our review of this TMDL.

Regarding your statement that "if it becomes necessary to debate the technical merits of cumulative frequency analysis, we would need to schedule a follow-up meeting," while we do not see this meeting as an occasion for a "debate" about the legal or technical aspects of this TMDL, we would find it very helpful for the tribe to present a full explanation of its critique of Washington state's methodology and justification of its own methodology. Indeed, the reasonableness of the methodology employed appears to be central to each of the four subparts to your Questions Presented within the draft agenda.

We look forward to Kalispel Tribe's visit, and please let me know if you have any further questions about the substance and logistics of this meeting.

Cordially,

**Sarah Furtak**

U.S. Environmental Protection Agency  
Office of Wetlands, Oceans, and Watersheds  
Assessment and Watershed Protection Division  
Watershed Branch  
EPA West Building, Room 7330-A  
1301 Constitution Avenue, NW  
Washington, DC 20004  
Phone: (202) 566-1167

-----Deane Osterman <dosterman@kalispeltribe.com> wrote: -----

To: Sarah Furtak/DC/USEPA/US@EPA

From: Deane Osterman <dosterman@kalispeltribe.com>

Date: 06/29/2012 02:15PM

Cc: Zach Welcker <zwelcker@kanjikatzen.com>, Rick Desimone <rick@desimonecg.com>, Mike Bussell/R10/USEPA/US@EPA

Subject: Kalispel/EPA July 24th Meeting Materials

Dear Sarah:

I have attached the Tribe's objective and proposed agenda for our upcoming meeting on July 24, 2012. If you could insert the names and titles of all attendees from EPA, as well as the specific location of the meeting, that would be great. Please also confirm that you will have A/V equipment on hand to enable us to deliver our presentation. This is an important and expensive trip for us out to D.C., so we're really hoping to make our two hours together count. To help achieve this end, we are preparing and will provide you with a copy of our presentation at least one week in advance of our meeting. We think it would help facilitate a more efficient meeting

if the panelists could review that presentation, along with the Tribe's March 13, 2012 letter and November 30, 2011 presentation to EPA, prior to the meeting. Such review will help minimize the amount of time we need to spend on background issues and allow us to focus on the questions presented to the panel.

I also think our meeting will be more productive if we can agree to three basic assumptions beforehand. These include:

1. In the context of a TMDL for a multi-jurisdictional waterway, EPA requires an upstream sovereign to meet the water quality standards of a downstream sovereign.
2. EPA will reject an upstream sovereign's determination of compliance with the downstream sovereign's water quality standards where the methodology underlying that determination contravenes downstream standards.
3. For purposes of questions 1 and 2, EPA treats states and tribes with treatment-as-a-state status identically.

Finally, I want to make it clear that the Tribe is primarily interested in discussing the Pend Oreille River Temperature TMDL for consistency with national TMDL policy and state and tribal water quality standards on the basis of the record before EPA. If it becomes necessary to debate the technical merits of cumulative frequency analysis, we would need to schedule a follow-up meeting. We hope that the panel is selected with this understanding in mind. Additionally, we would appreciate a response to the questions and assumptions posed in this letter.

I look forward to hearing from you soon.

Regards,

Deane Osterman, Executive Director

[dosterman@knrd.org](mailto:dosterman@knrd.org)

[www.knrd.org](http://www.knrd.org)

v 509.447-7282

c 509.993.0879

\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

This Email message contained an attachment named

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For further information, please contact the EPA Call Center at (866) 411-4EPA (4372). The TDD number is (866) 489-4900.

\*\*\*\*\* ATTACHMENT NOT DELIVERED \*\*\*\*\*

[attachment "Objective and Agenda.docx" removed by Sarah Furtak/DC/USEPA/US]

[attachment "Pend Oreille River Temperature TMDL Meeting 11 30 11 Final.pptx" removed by Sarah



Furtak/DC/USEPA/US] jul\_5\_2012\_mark\_up\_kalispel\_agenda\_draft.docx

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